be futile in the absence of authority to enter a decree effective against the seized articles located in Missouri.

"Petitioner makes an appealing argument that the purpose of § 1404 (a) was to relieve hardships incident to the expense and inconvenience occasioned by a litigant being required to try a case far removed from his home or place of business. Undoubtedly such was the purpose of the statute, as was recognized by the Supreme Court in the *Collett* and *National City Lines* cases, but even so, such argument is no aid to a solution of the jurisdictional issue with which we are presented. It is an argument which may more appropriately be directed to Congress than to the courts.

"There are called to our attention a number of District Court decisions (mostly unpublished) which have taken the same view of the instant question as did the respondent. A well reasoned opinion with which we agree is that of *United States* v. *23 Gross Jars, etc.*, 86 F. Supp. 824, 825, in which the court stated: 'This libel having been brought under favor of 21 U. S. C. A. § 334, the articles may be condemned "in any district court of the United States within the jurisdiction of which the article is found." Since the articles were found in the Western District of Pennsylvania this action only could be commenced in that district. It could not, under Section 334, have been brought in this district. Since this is so and since Section 1404 (a) may only be used to transfer actions to districts where they could have been brought, it follows that section 1404 (a) could not be used to transfer this action here.'

"Petitioner cites a number of cases in support of the proposition that venue may be waived by the parties where the court has jurisdiction of the subject matter. There is no point in citing or discussing such cases for the reason that the subject matter of the involved actions was the seized articles, of which the Indiana court never acquired jurisdiction. Under such circumstances, we are of the view that the parties' consent to venue was without effect.

"In our judgment, respondent correctly held that the Indiana court was without jurisdiction and that the remanding order was proper. The relief prayed for is, therefore, denied, and the petition dismissed."

On May 3, 1951, the claimant filed a petition for a writ of certiorari to the United States Supreme Court, which was denied on June 4, 1951.

On October 19, 1951, the claimant having withdrawn its appearance and requested that all its pleadings be stricken from the record, the court ordered that the product be condemned and destroyed.

17642. Misbranding of a tomato product. U. S. v. 66 Cases * * *. (F. D. C. No. 31001. Sample No. 15356–L.)

LIBEL FILED: May 16, 1951, District of Kansas.

ALLEGED SHIPMENT: On or about March 4, 1951, by the May Bros. Grocery Co., from Milan, Mo.

PRODUCT: 66 cases, each containing 24 unlabeled No. 2 cans, of a tomato product at Kansas City, Kans. Examination showed that this product was packing table tomato juice containing some tomato seeds and small lumps of tomatoes.

NATURE OF CHARGE: Misbranding, Sections 403 (e) (1) and (2), the product failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of the quantity of the contents; and, Section 403 (i) (1), the label failed to bear the common or usual name of the food.

DISPOSITION: July 25, 1951. Default decree of condemnation and destruction.

17643. Adulteration and misbranding of tomato puree. U. S. v. 246 Unlabeled Cans, etc. (F. D. C. No. 30797. Sample No. 9079–L.)

LIBEL FILED: March 7, 1951, Northern District of Illinois.